

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL A. PHELPS,

Plaintiff,

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

Case No. C04-5215 FDB

ORDER ON ATTORNEY FEES

This matter comes before the Court on Plaintiff's motion for authorization of attorney fees under 42 U.S.C. § 406(b). Counsel for Plaintiff seeks a net fee award of \$7,791.22. The Commissioner has filed a response to Plaintiff's motion without objection to the fee request.

This court has jurisdiction to award attorney fees for work before this Court under 42 U.S.C. § 406(b). Straw v. Bowen, 866 F.2d 1167 (9<sup>th</sup> Cir. 1989). Plaintiff must apply to the Social Security Administration for an award of fees for representation at the administrative level. 42 U.S.C. § 406(a); Stenswick v. Bowen, 815 F.2d 519 (9<sup>th</sup> Cir. 1987).

Under 42 U.S.C. § 406(b)(1)(A) the court can only award fees up to the 25 percent withheld from the past-due benefits. This 25% limit applies to the total of 42 U.S.C. § 406(a) and 406(b) fees

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1 combined. See, Morris v. Social Sec. Admin., 689 F.2d 495, 497-98 (4<sup>th</sup> Cir. 1982); Webb v.  
2 Richardson, 472 F.2d 529, 536 (6<sup>th</sup> Cir. 1972); Dawson v. Finch, 425 F.2d 1192, 1195 (5<sup>th</sup> Cir.  
3 1970).

4 Previously, this Court awarded Plaintiff's counsel \$5,248.78 pursuant to the Equal Access to  
5 Justice Act (EAJA). An administrative attorney fee of \$5,300.00 was previously awarded. Plaintiff's  
6 counsel now petitions for a gross fee of \$18,265.00. Plaintiff has subtracted from 25% of the past  
7 due benefits the amount awarded pursuant to the EAJA and at the administrative level, leaving a net  
8 fee of \$7,791.22.

9 ACCORDINGLY,

10 IT IS ORDERED:

11 Plaintiff's Motion for an Award of Attorney's Fees [DKT #26] is **GRANTED**. Plaintiff is  
12 awarded 42 U.S.C. § 406(b) attorney fees in the sum of \$7,791.22., minus any § 406(d)  
13 administrative assessment.

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15 DATED this 11<sup>th</sup> day of May, 2007.

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FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE

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